



Signed and Filed: February 16, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -)
) Jointly Administered
PACIFIC GAS AND ELECTRIC)
COMPANY,)
) Date: June 27-28, 2022
Reorganized Debtors.) Time: 9:00 AM
) Via Zoom Video
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088)
(DM) .)

SCHEDULING ORDER FOR REMOTE TRIAL

On December 21, 2021, the Court held a scheduling conference on Reorganized Debtors' objections to the claims of Todd Greenberg ("Claimant") (See claims ##77335, 76018 and 78381, Fortieth Omnibus Objection to Claims (Dkt. No. 9455), and One Hundred Tenth Omnibus Objection to Claim (Dkt. No. 11420)).

1 Jennifer L. Dodge and Thomas B. Rupp appeared for the
2 Reorganized Debtors. Richard A. Lapping appeared for the
3 Claimant.

4 Upon due consideration, the Court hereby enters the
5 following scheduling order.

6 **TRIAL.** The trial or hearing ("Trial") on the above matters
7 will commence on the Date and Time of Trial, set forth below and
8 to be held via Zoom Video. The Time Reserved for Trial is also
9 shown below. During the week prior to the Trial, the Court may
10 move the starting time or day. The Court's Calendar
11 Clerk/Courtroom Deputy will advise the parties of any such
12 change by telephone or e-mail. **All parties are cautioned to be**
13 **prepared to adjust their schedules accordingly.**

14 The Court is closed to an in-person trial as a result of
15 the dangers presented by the COVID-19 pandemic. In accordance
16 with Federal Rule of Civil Procedure 43(a), made applicable here
17 by Federal Rule of Bankruptcy Procedure 9017, for good cause in
18 compelling circumstances and with appropriate safeguards, the
19 Court may permit testimony by contemporaneous transmission from
20 a location other than the courtroom. The Court finds that the
21 public danger presented by the COVID-19 pandemic merits
22 application of this rule as to all witnesses who may remotely
23 testify at the Trial, through the use of video conferencing
24 technology.

25 Further, the Court finds that these procedures will provide
26 adequate safeguards for purposes of Federal Rule 43(a) and
27 ensure due process of law. These procedures will (i) enable the
28 Court to identify, communicate with, and judge the demeanor of

1 all witnesses in real time, (ii) enable counsel for the parties
2 to see and hear the witness testimony, interpose objections, and
3 communicate with the Court in real time, (iii) enable the
4 parties, the witnesses and the Court to have simultaneous access
5 to an identical set of pre-marked exhibits, (iv) avoid any undue
6 influence or interference with the witnesses in connection with
7 their testimony, and (v) preserve the ability of any witness to
8 be represented by counsel during the proceeding, and to
9 communicate with such counsel as the Court deems appropriate.

10 Participants in the Trial will be connected with the
11 courtroom but will not be physically present. The Court staff
12 will provide a link or URL (internet address) to the persons
13 identified by the parties.

14 Each participating attorney and each witness must have
15 simultaneous access to a computer, equipped with a camera, that
16 is capable of receiving and transmitting audio and video, or a
17 tablet or smart phone, that satisfy the following requirements:
18 (1) Internet browsing software that is adequate to facilitate
19 the Court's video hearing provider, (2) an Internet connection
20 with bandwidth adequate to support the individual's use of the
21 video hearing provider, and (3) Adobe Acrobat Reader for
22 purposes of reviewing exhibits, as directed by counsel or the
23 Court. The device must have sufficient video and audio
24 capabilities to allow the speaker to hear and be heard by other
25 participants on a consistent basis. Further, the attorney or
26 witness using it must be situated in a location with wi-fi,
27 cellular, or other service adequate to provide clear audio and
28 video.

1 No later than **June 14, 2022**, the parties shall provide to
2 the courtroom deputy (Ms. Lorena Parada,
3 Lorena_Parada@canb.uscourts.gov, 415-268-2323), and to each
4 other, a list of all attorneys and witnesses who will
5 participate in the Trial, together with an email address and
6 telephone number for each. The telephone number provided should
7 be a number at which the attorney or witness can be reached
8 during the Trial in the event of an interruption of the video or
9 audio feed. This requirement is in addition to any requirements
10 previously or subsequently established by the Court for the
11 parties to disclose to each other, by a date certain, the
12 identity of the witnesses they intend to present at trial.

13 **MOTIONS**. Unless otherwise ordered, (a) a motion by the
14 Claimant to amend any of the three claims must be heard no later
15 than **March 15, 2022** and (b) motions for summary judgment must be
16 heard no later than **June 7, 2022**.

17 **DISCOVERY**. Discovery shall be completed by the Discovery
18 Deadline shown below. Completion means that depositions must be
19 concluded, although not necessarily transcribed. As to written
20 and production discovery, responses must be due before the
21 Discovery Deadline. The Court will attempt to resolve all
22 discovery disputes on an expedited basis via telephonic
23 conference, which any party may initiate by request to Ms.
24 Parada, and notice to the other party after they have met and
25 conferred and made a good faith effort to resolve the dispute.
26 The party requesting the conference should submit a brief letter
27 or e-mail to Ms. Parada explaining the issues to be presented;
28

1 the other party may submit a brief letter or e-mail in the same
2 manner.

3 The Discovery Deadline may be extended by the parties by
4 agreement, without an order of the Court.

5 **EVIDENCE**. Declarations of non-expert witnesses will not be
6 considered except by stipulation of the parties or prior Court
7 approval.

8 **PRE-TRIAL SUBMISSIONS**. Not later than **14** calendar days
9 before the Date and Time of Trial, each party shall:

10 (a) File and serve copies of a trial brief, which shall
11 include a summary of the facts to be proven and the legal
12 theories on which the party relies. Briefs shall not exceed **15**
13 pages without prior permission of the Court. The Court will not
14 normally request or permit post-trial briefs.

15 (b) File and serve a witness list, including a brief
16 summary of the anticipated testimony from each witness. If a
17 party to the matter will be called as a witness (even as an
18 adverse witness) that party's name must be included on the
19 witness list. The presence of a witness' name on the witness
20 list is to alert the Court and the other side that the witness
21 may be called. It does not mean that that person will be
22 called. Accordingly, each party is responsible for ensuring the
23 attendance of every witness the party intends to call, whether
24 or not named by the other side. Except in exceptional
25 circumstances, absent consent by the other side, a party will
26 not be allowed to call a witness not named on that party's
27 witness list. This subparagraph shall not apply to impeachment,
28 rebuttal or expert witnesses or their testimony.

1 (c) [Reserved]

2 (d) File and serve a list of exhibits the party intends to
3 introduce into evidence (other than those to be used for
4 impeachment or rebuttal). Exhibits that are already on the
5 Court's docket do not need to be served but must be listed by
6 docket number and a brief description. Copies of all exhibits
7 not already on the docket must be produced as separately titled
8 pdf files, identifying each exhibit by exhibit number or letter
9 and a brief description. Lengthy exhibits should be bookmarked
10 in order to allow counsel, witness and the Court to readily
11 access the relevant portion(s) of the exhibit.

12 Those exhibits shall also be emailed to
13 Montali.Orders@canb.uscourts.gov.

14 Upon receipt of the electronic documents, each attorney and
15 witness shall take the steps necessary to ensure that all
16 electronic documents can be successfully opened and are readily
17 available during the Trial.

18 Exhibits to be used solely for rebuttal or impeachment
19 shall be encrypted in pdf format with a simple user-friendly
20 password. They will be emailed to counsel, the parties, the
21 courtroom deputy only and identified and marked as such when
22 directed by the Court.

23 (e) Reorganized Debtors' exhibits should be marked by
24 number and Claimant's exhibits should be marked by letter.

25 **CONDUCT OF TRIAL VIA VIDEO. Any witness called to testify**
26 **at the Trial shall testify by contemporaneous transmission from**
27 **a different location into the video courtroom (each a "Remote**
28 **Witness").**

1 (a) Each Remote Witness shall be placed under oath and
2 their testimony shall have the same effect and be binding upon
3 the Remote Witness in the same manner as if such Remote Witness
4 were sworn and testified in open court.

5 (b) Each Remote Witness shall provide their testimony from
6 a quiet room and must situate themselves in such a manner as to
7 be able to both view the video and be seen by the Court.

8 (c) While the Remote Witness is sworn and testifying: (i)
9 no person may be present in the room from which the Remote
10 Witness is testifying, (ii) the Remote Witness may not have in
11 the room any documents except the exhibits submitted by the
12 parties pursuant to this order and any declaration submitted in
13 lieu of direct testimony, and (iii) may not communicate with any
14 other person regarding the subject of their testimony, by
15 electronic means or otherwise. If the witness or their counsel
16 seek to communicate with one another, either shall openly
17 request a recess for such purpose. If such request is granted
18 by the Court, the witness and their counsel may privately confer
19 "offline," i.e., by telephonic means that are not transmitted to
20 the other parties.

21 (d) Remote Witnesses who are testifying as experts must
22 provide advance direct testimony by declaration submitted by the
23 parties pursuant to this order. Remote Witnesses shall be
24 available for cross examination. Failure of a Remote Witness to
25 be available for cross examination may result in striking of the
26 Remote Witness's declaration.

27 EXPERTS. The presentation of expert testimony at Trial
28 shall be governed by the following:

1 (a) Direct evidence shall be presented by a declaration
2 that authenticates the report of the expert. See FRCP
3 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each
4 party shall file and serve declarations of experts and other
5 documentary evidence related thereto no later than **30** calendar
6 days prior to the Discovery Deadline.

7 (b) To cross-examine an opposing party's expert declarant,
8 a party shall notify the opposing party in writing or by e-mail
9 at least **3 court** days before the Date and Time of Trial, in
10 which case the declarant will be required to be available to
11 appear at Trial via Zoom. Any party who fails to notify the
12 opposing party will not be permitted to cross-examine the
13 opposing party's expert. Any party who requests the right to
14 cross-examine an expert and then does not do so will be expected
15 to reimburse the opposing party no less than the expenses
16 incurred in producing the expert at the Trial.

17 If either party anticipates the use of rebuttal expert
18 testimony, counsel should meet and confer regarding the timing
19 of disclosure of such expert, the submission of the expert's
20 report and discovery regarding such expert. If the parties do
21 not reach agreement, the matter should be brought before the
22 Court in the same manner as discovery disputes as provided in
23 this order.

24 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
25 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must
26 advise the opposing party of any objections to the introduction
27 of testimony or exhibits. Parties must meet and confer before
28 Trial to attempt to reach agreement regarding admissibility.

1 The Court expects the parties to make good faith efforts to
2 resolve all evidentiary issues.

3 **MOTIONS IN LIMINE**. If efforts to resolve disputes regarding
4 the introduction of testimony or exhibits are unsuccessful,
5 motions in limine should be filed and served no later than **4**
6 **court** days before the Date and Time of Trial. Such motions
7 should include a certification that the moving party has
8 complied in good faith with the meet and confer requirements of
9 the preceding paragraph. Opposition should be filed and served
10 no later than **1 court** day before the Date and Time of Trial.
11 Motions in limine will be heard at the commencement of Trial.

12 Notwithstanding the foregoing, if a party intends by a
13 motion in limine to exclude an expert or the expert's report,
14 that party should set the motion on the Court's regular law and
15 motion calendar, to be heard at least **7** calendar days before the
16 Date and Time of Trial.

17 **STIPULATIONS**. At the commencement of Trial, the parties
18 must be prepared to stipulate into evidence all exhibits that
19 are admissible for at least one purpose. Bona-fide objections
20 may be reserved, with the issue of admissibility deferred until
21 the exhibit is offered into evidence.

22 **ORDER OF PRESENTATION AT TRIAL**. Unless otherwise agreed by
23 the parties or ordered by the Court, the Claimant will present
24 his case-in-chief first.

25 **IMPEACHMENT AND REBUTTAL WITNESSES**. The requirement of
26 advance identification of witnesses and production of exhibits
27 does not apply to witnesses and exhibits presented for purposes
28

1 of impeachment or rebuttal.¹ This paragraph supersedes the
2 expert disclosure procedure of FRCP 26(a)(2)(D)(ii),
3 incorporated via Fed. R. Bankr. P. 7026.

4 **DEMONSTRATIVE EVIDENCE**. The Court does not want charts,
5 power point presentations, whiteboards, or similar large display
6 items to be used during trial. Parties desiring to summarize,
7 reproduce or display evidence may use the "Share Screen" feature
8 in Zoom, subject to the Court's permission. Any exceptions to
9 this policy should be requested well in advance of trial.

10 **NOTICE TO COURT**. No later than the Monday of the week prior
11 to the Date and Time of Trial, counsel for the Reorganized
12 Debtors **must** telephone or e-mail the Court's Calendar
13 Clerk/Courtroom Deputy, Ms. Lorena Parada (415-268-2323;
14 Lorena_Parada@canb.uscourts.gov) and report: whether the parties
15 intend to go forward with the Trial as scheduled; if settlement
16 is likely; whether the time reserved for the Trial is realistic;
17 and any other relevant information.

18 **NON-COMPLIANCE**. Any failure of a party to comply timely
19 with this scheduling order may result in judgment against such
20 party, removal of the Trial from calendar, exclusion of evidence
21 or imposition of monetary or non-monetary sanctions. See FRCP
22 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

24 ¹ The proper function of rebuttal evidence is to contradict,
25 impeach or defuse the impact of the evidence offered by an
26 adverse party. Testimony offered only as additional support to
27 an argument made in a case in chief is improper on rebuttal.
28 Peals v Terre Haute Police Dept., 535 F.3d 621, 630 (7th Cir.
2008); see also Daly v. Far Eastern Shipping Co., 238 F.Supp.2d
1231, 1238 (W.D. Wash. 2003), aff'd 108 Fed. Appx. 476 (9th Cir.
2004).

1 **DATE AND TIME OF TRIAL:** June 27 and 28, 2022 beginning at
2 9:00 AM

3 **TIME RESERVED FOR TRIAL:** Two days

4 **DISCOVERY DEADLINE:** May 20, 2022

5 **PRE-TRIAL STATUS CONFERENCE:** The Court will conduct a pre-
6 trial status conference on May 24, 2022 at 11:00 AM via
7 Zoom. In addition to normal business, counsel and the Court
8 will test the adequacy of all parties' audio and video
9 connections and other matters related to the conduct of the
10 remote trial. The Court expects counsel to take similar steps
11 prior to trial (but without court involvement) to assure proper
12 connections with their respective clients and witnesses.

13 **OTHER PROVISIONS:** Although conducted using video
14 conferencing technology, the Trial constitutes a court
15 proceeding. No person shall record, from any location or by any
16 means, the audio or video of the Trial. The audio recording
17 created and maintained by the Court shall constitute the
18 official record of the Trial. Further, the formalities of a
19 courtroom shall be observed. Counsel and witnesses shall dress
20 appropriately, exercise civility, and otherwise conduct
21 themselves in a manner consistent with the dignity of the Court
22 and its proceedings.

23 **END OF ORDER**

COURT SERVICE LIST

ECF Recipients